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ABSTRACT

The ramifications of a decision by the New Jersey Supreme Court that legislation shall provide for the maintenance and support of a "thorough and efficient" system of free public education for all children in the state from ages 5 to 18 are discussed. Salient points made by the court in the decision are examined, and ensuing reactions from the state legislators and education associations are cited. The following resultant problems are described: (1) defining a "thorough and efficient" system of education was found to be difficult; (2) legislation on tax allocations for school districts was delayed because of disagreements between different school districts; (3) arguments arose on the subject of teacher accountability and evaluation; (4) the State Department of Education took major financial decisions away from local school boards; (5) questions arose on the subject of teacher tenure, employment, and certification; and (6) a demand for a commission to study the process of teacher education evoked strong objections from education associations. (JD)

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THOROUGH AND EFFICIENT EDUCATION AND TEACHER TENURE IN NEW JERSEY

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Thorough And Efficient Education And Teacher Tenure In New Jersey

In 1978, the phrase "thorough and efficient," or "T&E" as it is commonly called, has become a mainstay in the educational jargonese in New Jersey. While some refer to "thorough and efficient" as the panacea for public education in New Jersey and others loathe it as a needless bureaucracy, "T&E" is a complex process which has had an inestimable effect on every aspect of the educational community. The focus of this paper will concern itself with the origins of the law; specifically, Robinson v. Cahill, the ramifications of the New Jersey Supreme Court decision, and the effects of that decision on two aspects of public school teaching; accountability and tenure.

Robinson v. Cahill

On January 9, 1973, the New Jersey Supreme Court first heard arguments for what is now commonly referred to as Robinson v. Cahill.[1] This case began the litigation which led to the passage of Chapter 212, Laws of 1975, otherwise referred to as the "T&E" law. The plaintiff challenged the constitutionality of New Jersey's system of financing public schools. The plaintiff further argued that each child in the state of New Jersey was entitled to a "thorough and efficient" education as provided for in the New Jersey State Constitution, 1947. The relevant

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[1]This was a landmark case in the State of New Jersey affecting the Educational Process. There are actually four related cases properly annotated as Kenneth Robinson, an infant, by his parents and guardian (ad litim), Ernestine Robinson (et al.) Plaintiffs-Respondents, v. William T. Cahill, Governor of State of New Jersey (et al.), Defendents - Appellant.

provision cited asserted that

> The Legislation shall provide for the maintenance and support of a thorough and efficient system of free public education for the instruction of all the children in the State between the ages of five and eighteen years.[2]

The New Jersey Supreme Court, in a unanimous opinion, rendered a favorable verdict to the plaintiff on April 3, 1973. With Chief Justice Weintraub presiding, the State Supreme Court held

> that New Jersey's system of financing public education which relies heavily on local taxation to furnish approximately 67 percent of public school costs, which leads to great disparity in dollar input per pupil and which has no apparent relation to mandates for equal educational opportunity is violative of the Constitutional provision which imposes upon the state the obligation to furnish a thorough and efficient system of public schooling.[3]

Not only did the Court rule that the State had failed to provide the plaintiff with a "thorough and efficient" education, but it further asserted that regardless of the constitutionality, the system was, at best, antiquated and unresponsive to the individuality of local school districts and their needs.

> . . . the local tax base is the taxable real property within the several districts and, of course, the amount of taxable real property within a district is not related to the number of students in it.[4]

Although it had resolved the case and made disparaging remarks regarding the system, the Supreme Court astutely recognized that financial aid will not guarantee positive educational results, but that it will help determine the availability of opportunity.

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[2]New Jersey State Constitution, 1947, Article 8, Section IV, Paragraph 1.

[3]New Jersey Reports, Volume LXII, p. 473.

[4]Ibid., p. 481.

> Obviously, equality of dollar input will not assure equality in educational results. There are individual and group differences which play a part. Local conditions, too, are telling, for example, insofar as they attract or repel teachers who are free to choose one community rather than another. But it is nonetheless clear that there is a significant connection between the sums expended and the quality of the educational opportunity.[5]

The Supreme Court further pointed out that while a "thorough and efficient" mandate existed in the State Constitution[6] there had been, in fact, no attempt by the Legislature to define this provision.

> Surely the existing statutory system is not visibly geared to the mandate that there be a thorough and efficient system of free public schools for the instruction of all children in this state between the ages of five and eighteen years. Indeed, the state has never spelled out the content of the educational opportunity the Constitution regards.[7]

The Supreme Court upheld the plaintiff on all counts but refrained from rendering an opinion on the subject of remedies. The Court apparently realized that it might be infringing on the powers of the Legislature and violating the hallowed concept of separation of powers. Even so, the language of the Court was clear in its final paragraphs, indicating that if the Legislature did not act, the Court would do so to insure that the Constitution would be upheld.

> The State had never spelled out the content of the constitutionally mandated educational opportunity. Nor has the State required the school districts to raise moneys needed to achieve the unstated standard.

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[5] Op. cit., p. 481.

[6] In fact, the history of the provision is complex. In 1875, there was an ammendment to the Constitution directing the Legislature to provide for a "thorough and efficient" education. But it was not until 1903 that the Legislature empowered the State Board of Education to implement the ammendment.

[7] New Jersey Reports, Volume LXII, p. 516.

> Nor is the State aid program designed to compensate for local failures to reach that level.[8]

The Supreme Court was obviously hoping that the Legislature would answer all of the questions raised in the Robinson v. Cahill decision. However, the Legislature failed to act on the recommendations of the Court by December 31, 1974. The apparently long period of time between the original decision and December 31, 1974, can be explained by the fact that the Court had nc desire, unless forced, to disrupt the entire public education system in New Jersey. However, since the legislature had failed to act by December 31, 1974, the initial implementation date would be pushed even further into the future with no remedy for the unconstitutional system of financing public schools.

Therefore, on January 23, 1975, the Supreme Court of New Jersey issued a Court Order pertaining to the existence of a remedy in regard to Robinson v. Cahill. The Court Order consisted of four major parts. First, the Court denied all motions for re-hearings and continuances. Second, the Order provided that there would be no changes in the existing statutory schemes affecting 1975-76 budget deadlines. Third, the Commissioner of Education was able to advise all local school districts regarding funding based on the law, which was in question as a result of Robinson v. Cahill. Finally, the Order asserted that the Court would hear oral arguments on the eighteenth of March, 1975. The arguments, according to the Order, would confine themselves to four major areas; first, arguments would address themselves to a

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[8]Op. cit., p. 519.

workable definition of "thorough and efficient" and translating that definition into financial terms; second, the Court agreed to hear arguments regarding the extent of its power to render relief on a temporary or permanent basis; third, in what particular ways the Court might exercise such power; and fourth, whether or not the Court should provide for a special Commission in order to insure a remedy by October 1, 1975, for the school year, 1976-1977.[9]

Because of the elusive nature of the phrase, "thorough and efficient," the bulk of the argument concentrated on the power of the Court. In fact, the primary question was whether or not the Court had a Constitutional obligation to act. After hearing all of the arguments, the Court ruled on May 23, 1975.

> If then, the right of children to a thorough and efficient system of education is a fundamental right guaranteed by the Constitution, as we have already determined, it follows that the Court must 'afford an appropriate remedy to redress a violation of those rights. To find otherwise would be to say that our Constitution embodies rights in a vacuum, existing only on paper (Coogan v. Nutley, Sun Printing Co., Inc., supra at 197).'[10]

At this point, the Court asserted that it was incumbent upon them, in view of the Legislature's inaction, to provide a remedy.

Once the Court had determined that it did not have the power to act, it ordered

> that for the school year 76-77, in the contingency aforestated, minimum support aid and save harmless funds shall not be disbursed as provided for under the existing statutes but shall be distributed in accordance with the incentive equalization formula of the 1970 Act.[11]

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[9] New Jersey Reports, Volume LXVII.

[10] Ibid., p. 347.

[11] Op. cit., Volume LXVII, p. 350.

In effect, if the legislature did not act, the Court would disallow the disbursement of funds to local school districts except as provided for in the above-quoted Order effective July 1, 1976.

Thus, the Court had provided a remedy in the absence of a statute that was Constitutional. In response to this action of the Court, the New Jersey Legislature finally passed The Public School Education Act of 1975 on September 29, of that year. Following passage of this legislation, that body addressed the Court and asked it to rule on the constitutionality of NJSA 18A:7A-1 et seq. The Court agreed to hear the case on November 24, 1975, and rendered its decision on January 30, 1976. In that decision, the Supreme Court held that the "Act is in all respects Constitutional on its face, assuming it is fully funded."[12] It is important to note that NJSA 18A:7A-25, which was part of the new law, placed a limit on annual budget increases. From this limit, the terminology "Caps" emerges when referring to annual budget increases. Finally, the Legislature had acted on one of the concerns of the Court; it had defined the Constitutional provision. However, the question of financing the law in order to provide equal educational opportunity throughout the state was left unanswered by the Legislature. In the final hearing of the Robinson v. Cahill Decisions, the Supreme Court was faced with the reality that the Legislature would again fail to act in the matter of funding the new Constitutional statute. As a result, the Supreme Court issued an injunction on May 13, 1976. The injunction read

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[12] New Jersey Reports, Volume LXIX.

> every public officer, state, county, and municipal would be enjoined from expending any funds for the support of any free public school unless timely regulative action was taken providing for the funding of the 1975 Act for the school year 1976-77, effective July 1, 1976.[13]

The public schools of New Jersey were effectively closed on July 1 of that year, causing many problems for the individual school districts.[14] The resulting confusion pushed the passage of the N.J. State Gross Income Tax, Chapter 47, Laws of 1976, on July 9, 1976. The injunction was lifted on the same date. There were two other pieces of legislation which were pertinent to the definition of "thorough and efficient" and the question of funding. Chapter 113, Laws of 1976 was passed on November 9, 1976. This law supplemented Chapter 212, Laws of 1975 and NJSA 18A:7A-1 et seq. Chapter 135, Laws of 1976 was passed on December 28, 1976. This law outlined the calculation method to be used by the State in determining Budget Caps.

The failure of the New Jersey Legislature to act on the Supreme Court's decision in Robinson v. Cahill can be traced to many factors. The system of financing New Jersey's public schools through property taxes had evolved into a system of very strong local control. The proliferation of many small districts throughout the State underscored a basic philosophy of New Jersey residents toward the education process. The various local districts had come to feel that the schools in that district were distinct because they reflected both the needs

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[13] New Jersey Reports, Volume LXX.

[14] Local School Boards were unable to begin processing of purchase orders; Summer School programs were either curtailed or eliminated and for the most part, districts shut down plant operations between July 1 and July 9, 1976.

and the demands of the individual community. However, the Supreme Court decision mandated that the State Legislature define a "thorough and efficient" education and, through the system of financing that definition, make sure that the program was being implemented according to State guidelines.

Secondly, the conflict which contributed to making the issue very controversial was the fact that both antagonists and proponents of the "thorough and efficient" law viewed the problem as a conflict between the richer suburban districts and the poorer rural districts. Since the new program would be tied to an income tax, legislators had to wrestle with the fact that their constituencies were generally appalled by the fact that they would be subsidizing the poorer, urban districts. However latent, the question of local control combined with racial antagonisms in such a way as to preclude hasty actions on the part of the Legislature.

Third, the economic climate of the nation in general and New Jersey in particular, made the Legislators cautious in their representation of their constitutencies on such an issue.

Finally, the Legislature was beset by the constant presence of very powerful lobbying groups in Trenton. The New Jersey School Boards Association, The New Jersey Education Association and other public employee groups served as a source of constant pressure by reminding Legislators that their actions on this all-important issue would go a long way towards determing who would support them in future elections.

According to Chapter 212, Laws of 1975, "T&E" was to provide all children in New Jersey the educational opportunity necessary

to enable them to function in modern society. The law listed a series of goals which were to serve as guidelines in the implementation of the law. The following is the actual wording of the goals called for in the law.

> 5. A thorough and efficient system of free public schools shall include the following major elements, which shall serve as guidelines for the achievement of the legislative goal and the implementation of this act:
>
> a. Establishment of educational goals at both the State and local levels;
>
> b. Encouragement of public involvement in the establishment of educational goals;
>
> c. Instruction intended to produce the attainment of reasonable levels of proficiency in the basic communications and computational skills;
>
> d. A breadth of program offerings designed to develop the individual talents and abilities of pupils;
>
> e. Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs;
>
> f. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies;
>
> g. Qualified instructional and other personnel;
>
> h. Efficient administrative procedures;
>
> i. An adequate State program of research and development; and
>
> j. Evaluation and monitoring programs at both the State and local levels.[15]

The "thorough and efficient" law was a comprehensive accountability program which called for a re-vamping of the entire structure of public education. The law called for reforms in three major areas: educational programs, financial reforms, and State Department organization.

> The system adopted by the legislature is a general accountability model which requires that educational goals be developed at both the State and local levels. In developing these goals, widespread community

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[15] Chapter 212, Laws of 1975.

> involvement is required. Secondly, a needs assessment must be conducted to ascertain the degree to which both schools and districts are achieving their goals. Program development must then follow, which is followed in turn by evaluation. All components of this planning process must be shared with the public.[16]

The law expanded on this general plan of community involvement and asserted that districts should pay particular interest to what has become known as the "basic skills." These include basic communication skills, such as reading, writing, and computational skills. Further, the law asserted that districts must, in its curriculum, provide for students with special needs by providing the physical facilities and instructional staff necessary.

Accordingly, one author has asserted that the

> New thorough and efficient law raises the State tax support level to about 40 percent statewide on the average. Budget "caps" are placed on all districts which are designed to allow the less affluent districts to "catch-up" with their more affluent neighbors.[17]

As noted earlier, a Graduated Income Tax was introduced to raise the necessary revenues for the implementation of such a plan. The net effect of this tax and re-distribution plan was to increase State expenditures from the 23 percent quoted in Robinson v. Cahill to approximately 40 percent. This represented an increase of approximately 17 percent but does not give an indication of actual dollar increase due to the inflationary nature of the economy during the debate surrounding the new education law.

The third area of re-organization demanded by the "T&E" Law was the State Department Of Education. "The "T&E" Law required

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[16]William Mathias, Statewide Educational Reform: New Jersey's "Thorough & Efficient" Mandate (Eric Document: ED 137 944, April 5, 1977), p. 4.

[17]Ibid., p. 5.

a much stronger monitoring system and technical assistance capability."[18] This was done in two basic ways. First, there was a considerable increase in the monitoring responsibilities of the twenty-one County Superintendents' Offices and, secondly, the four Educational Improvement Centers (EIC) throughout the state were either re-defined or organized to provide the technical assistance necessary.

It was the responsibility of the State Education Department to administer the Act and it did so with a general lack of decisiveness and preparation. In an effort to interpret the law, the State Department introduced an Administrative Code designed to facilitate the implementation of the Law. However, as confusion and a variety of interpretations emerged, local districts called upon the Commissioner to further clarify the Administrative Code. The result was a concise summary of the law published by the New Jersey State Department Of Education.[19] The "Primer" as it came to be called, was full of controversy as soon as it became public. It failed to provide direction, was no more clear and finally was discontinued as a result of pressure from affected groups, such as the NJEA.

In effect, the "T&E" Law was a complex law that was implemented without any effective, clear direction. The result was that various elements of the educational community interpreted "T&E" in the manner it saw fit. Teachers, administrators, and parents

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[18] Op. cit., p. 6.

[19] New Jersey State Department of Education, T&E. A Primer For School Improvement In New Jersey (Trenton, N.J.: State Department of Education, 1976).

all used, abused and quoted "T&E" as it suited them and their political needs.

Thorough And Efficient Education And Teacher Accountability

However, the "thorough and efficient" law was very clear on one item. The educational system must be accountable. The most blaring and most visible weakness according to the public, dissatisfied with rising costs and, in their view, declining returns, and administrators, bewildered by teacher militancy, was the professional staff. As a result, there were two major developments, one of which will be dealt with in this section. The two areas were teacher performance and, in the minds of many, the not unrelated area of teacher tenure.

Because the Public Education Law of 1975 called for sweeping changes in the system of financing public schools and actually defined a "thorough and efficient" education, the accountability question became of paramount importance. Using an industrial model, various groups asserted that in order to hold teachers accountable, there must be a procedure of measuring the progress of pupils after they have been under the influence of different teachers. This logic further argued that, if such a system were established, school boards could not only identify bad or incompetent teachers, but it could also recognize superior teachers. Thus, the evaluation system would be based on the students' progress, presumably through standardized test results.

The NJEA responded to this kind of approach immediately. That organization reproduced articles relevant to the issue,

offered workshops for its membership on accountability, and encouraged local associations to take part in the evaluation process. For example, the NJEA Instruction Division excerpted sections from a variety of publications and made them available to the general membership. The purpose, it seems, was to provide a firm, researched basis to counter-act the demands of those who saw accountability as measurable through student achievement. It is important to recognize that the NJEA did not oppose the idea of accountability if it was formulated consistent with the realities of public school teaching, but they vigorously opposed any and all attempts to make employment a condition of student progress.

> The parallel with the industrial setting is clear: If the job of the worker is to assemble relays, then it seems reasonable to count the number of relays the worker assembles and pay him or her accordingly. But in applying this procedure to teaching, a number of problems emerge which have not been widely recognized. The relay assembler receives parts which are identical (at least within very close limits) on which he or she performs a prescribed set of operations, also identical. Then the completed units leave the assembler, again almost identical from one to another.
>
> But none of this is true for the teachers. Pupils appear in the classroom differing in ability, level of achievement, home background, interest, motivation, age--differing in numerous ways. The teacher must recognize these differences as he or she strives to help individual pupils grow toward their own potential. Consequently, the teaching process will differ from pupil to pupil. If the teacher has been successful, each pupil will have improved educationally when he or she leaves the classroom but each will probably be no more like the others than when the year began.[20]

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[20]NJEA Instruction, Excerpts from Robert S. Soar & Ruth M. Soar, Problems In Using Pupil Outcomes For Teacher Evaluation (New Jersey Education Association), p. 1.

The NJEA also offered a continuous series of workshops on the subject of "T&E" and "accountability." These were organized in a myriad of different ways. The NJEA offered workshops at its annual convention, at its summer leadership workshops, and through the various Uni-Serv offices throughout the state. These programs were constantly being repeated and revised and are presently in the forefront of NJEA's concern.

In terms of local associations, the NJEA continued to urge local associations to make teacher evaluations part of the collective bargaining agreement pursuant to Chapter 123, Public Laws of 1975. NJEA regularly provides local districts with specific guidelines that it recommends as positive in nature. This is based on the NJEA contention that evaluation should be primarily instructive rather than punitive in nature.

In the absence of clear recommendations and procedures for evaluation from the Commissioner's office, "T&E" and its accompanying accountability system could easily become the basis of school board actions directed at the termination of teacher employment. It is at this point that the NJEA, which was one of the earliest proponents of "T&E," vigorously opposed the process of evaluation through standardized test results of students.[21]

The second major area of teacher accountability came through attacks on the system of tenure. Tenure in New Jersey dates back to 1909. At that time, New Jersey Lawmakers decided that it was

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[21]The NJEA was one of the first organizations to support "T&E." In fact, the NJEA appeared regularly at the Robinson v. Cahill hearings and presented "amicus curi"briefs.

necessary to protect the educational system from the nepotism that was so often found in localities which were, for all practical purposes, independent. Tenure in New Jersey is covered by a very extensive statute.[22] The coverage is stated as

> Statewide; covers properly certified teachers, principals, assistant principals, vice principals, superintendents, assistant superintendents and other employees who hold positions requiring a certificate. Also included are professors, associate professors, assistant professors, instructors, supervisors, registrars, teachers and other persons employed in a teaching capacity in a state educational institution.[23]

Under these statutes, the only causes for dismissal or reduction in salary are

> Inefficiency, incapacity, conduct unbecoming a teacher or other just cause.[24]

Tenure further provides a system of seniority and a protection against unfair dismissal.[25] It does not, contrary to popular belief, guarantee life-time employment.

In August of 1976, the New Jersey Assembly Education Committee initiated a review of tenure in the public schools. In the introduction of that committee's report to the Legislature, the purpose of such a review was outlined as being in accordance with the Public School Education Act of 1975.

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[22]Frieda S. Shapiro, Project Director, and Jeanette Vaughan, Senior Staff Consultant, Teacher Tenure And Contracts Research Report, 1971-R3 (NEA Research: National Education Association, 1971), p. 61.

[23]Ibid., p. 61.

[24]Ibid., p. 61.

[25]This is outlined very explicitly in the rules regarding tenure. Refer to Appendix 1. This will be presented later in this paper.

> In enacting the Public School Education Act of 1975, New Jersey Education entered a new phase of evaluation, assessment, and accountability. At every step and in every district, the "T&E" process requires thoughtful re-examination of the educational system with the objectives of maintaining and, where necessary, improving the quality of education in every classroom in this State. While this is essentially a local process, the ultimate responsibility for the education in New Jersey rests with the State. It is the intention of the Legislature, through the Joint Committee on the Public Schools and the standing references committees of both houses, to continuously review all aspects of education in New Jersey, in order to insure the attainment of the constitutional and statutory mandate of a thorough and efficient education of free public education for all children in the State.[26]

The Committee conducted its review by familiarizing itself with the relevant literature, asking for input from the various educational organizations throughout the State and through public hearings designed to illicit public opinion on this most controversial issue.[27] The Committee was not unanimous in its findings and a minority report was also filed.

In the summary of its findings, the Committee asserted that

> As presently administered, the tenure laws tend to inhibit educational improvement. In fact, the record indicates that the tenure system as it relates to teacher dismissal is non-functional.
>
> This is not a problem inherent to tenure. Rather, it is a result of improper management. Instructional improvement can be achieved under tenure through (1) procedural reforms which would make actions under the tenure laws more responsive and responsible; (2) a mandatory performance based program of evaluation and accountability of all professional personnel; (3) a comprehensive revision of teacher certification requirements; and (4) a performance review of teacher preparation programs.[28]

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[26]Assembly Education Committee, A Study of Tenure In The Public Schools (New Jersey Legislature, April 28, 1977), p. 1.

[27]Ibid., p. 2.

[28]...

As a result of its findings, the committee issued eleven recommendations, and the Minority report agreed totally with five of those recommendations.[29]

The Assembly's Education Committee's report on tenure became known as the Newman Report; named after the chairman of that committee. Specifically, the Newman Report offered remedies for what it saw as deficiencies in the procedure of New Jersey's tenure system. However, in addition to those procedural reforms, the committee made a number of proposals which would affect teacher certification, the evaluation of teacher performance and teacher education.[30]

Presently, New Jersey's tenure statute calls for permanent tenure after three years and one day of employment in a school district over a four year period.[31] In order to be eligible for this protection, the individual must be properly certified. The Newman Report called for drastic overhaul of the existing system of certification. Although the recommendation included a "Grandfather clause," it was cause for much consternation among teachers.

That recommendation called for a plan of limited licensing of teachers with a baccalaureate degree. It would become necessary for teachers to complete the Masters degree in a subject

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[29]Assembly Education Committee, Minority Report To The Report Of The Assembly Committee On Tenure In The Public Schools (New Jersey Legislature, May 9, 1977). "Summary of Recommendations"

[30]There are eleven recommendations. These are included in the Appendix.

[31]All information regarding tenure statutes was received during an NJEA Uni-Serv workshop on "Teacher Rights" that was held in Bergen County on March 30, 1978.

area and have three years of teaching experience. Upon completion of these requirements, the teacher would be eligible for tenure.

This and other, more specific, revisions of the tenure laws would have a tremendous effect on the State's teachers. Under the present statutes, a teacher is only required to hold a baccalaureate degree and is eligible for permanent certification. This assumes that the individual was graduated from an approved education program. The effect of the committee's revision would be to cause increased costs for both prospective teachers and various school boards. There exists in many contracts in New Jersey tuition re-imbursement clauses. All salary guides for teachers in the state are based not only on experience, but also on advanced levels of graduate course work.

Further, present statutes give teachers in New Jersey certain rights that the Newman Report is recommending that the Legislature abolish. For instance, at present, a teacher in New Jersey accrues seniority rights within all areas of certification that the individual has at the time of his hiring by a school district, regardless of whether or not that teacher has actually taught in that area in his present district. In effect, if a teacher is let go for lack of work in one area of certification, that teacher then has the right to a job in another discipline in which he is certified even if the teacher in question has not taught in that area previously in his present district.

In the present decade, New Jersey teachers have come to view "Reductions In Force" (RIF) as the harsh reality of a profession that was only recently searching for more willing, competent

professionals in an expanding job market. The job protection afforded to those individuals with dual certification would be lost if the present statutes were revised according to the recommendation of the Newman Report. The NJEA responded to this revision with two essential concerns. First, "If dual certification were removed, teachers and administrators would lose certification in areas where they are eminently qualified to teach. Potential administrators would be prevented from eligibility for such posts."[32] Second, "An excellent teacher who has been RIFFED would lose certification as the result of unemployment."[33] To clarify, the Newman Report calls for revoking the certificate if a teacher does not teach in that subject area for five years. In light of the present economy, the NJEA response is designed to protect the teacher, who, because of factors beyond his control, is either unemployed or faced with impending unemployment.

The second major area in the Newman Report offers suggestions for the process of teacher evaluation. In New Jersey, the present statute is very explicit and somewhat rigorous in the guidelines for the evaluation of non-tenured teachers. However, there is absolutely nothing in the statute providing for any evaluation of tenured teachers.[34] The Newman Report called for formal evaluation of all school personnel no less than two times a year, and that a statewide comprehensive evaluation system be developed. The NJEA responded to those suggestions with two

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[32]Judith M. Owens, President, "Report of the President to the Delegate Assembly," (NJEA Delegate Assembly: New Jersey Education Association, May 14, 1977), p. 15.

[33]Ibid., p. 15.

[34]See Footnote 31.

points. First, the NJEA argued that evaluation in itself is not bad. Only when it is used as a punitive device rather than as a source of constructive suggestions and recommendations for improvement does it take on a negative connotation.[35] The NJEA then offered elements that it felt must be included in order to insure that evaluations would be used as an instructive tool.[36] With regard to the Newman Report's suggestion that there be a statewide evaluation system, the NJEA rejected that revision outright.[37]

The third major area of concern by the committee was the process of teacher education. The committee called for the establishment of a commission to study the teacher preparation programs in the State.[38] The NJEA simply argued that there is more than enough agencies already addressing themselves to the question of teacher education and, therefore, another commission would be superfluous.[39]

On June 1, 1977, approximately two months after the publication of the Newman Report, Commissioner Fred G. Burke presented to the New Jersey State Board of Education his proposed regulations for the evaluation of tenured teachers.[40] According to the NJEA,

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[35]Judith M. Owens, President, "Report of the President to the Delegate Assembly" (NJEA Delegate Assembly: New Jersey Education Association, May 14, 1977), pp. 8-9.

[36]Ibid., p. 9.

[37]Ibid., p. 10.

[38]See Appendix 1, Recommendation 9.

[39]Ibid., p. 10.

[40]Fred G. Burke, Commissioner, New Jersey Administrative Code, Title 6, (Trenton: N.J. Department of Education, June 1, 1977). These proposed guidelines for the evaluation of tenured teachers were vaguely mentioned by the Commissioner during the tenure hearings conducted by the Assembly Education Committee.

> The proposed changes in the New Jersey Administrative Code submitted by Commissioner Burke to the State Board of Education are, at least, punitive in nature. They contain "student progress" as one of the criteria for evaluation of teachers and fail to contain meaningful teacher involvement in the development of policies on the local level. As written, the proposed guidelines could make constructive evaluation impossible. While the NJEA remains committed to the regular evaluation of teachers, it will insist, as it has in the past, that procedures for evaluation be fair, legal, positive, and lead to assisting teachers in the improvement of instruction through negotiations under Chapter 123 and PERC rules.[41]

The NJEA prepared a detailed response to the Commissioner's suggested evaluation procedures and concluded that overall, the "guidelines are not of a positive nature that would encourage enlightened supervision for tenure teaching staff members."[42]

Conclusion

The verdict rendered in Robinson v. Cahill has had far-reaching effects on public education in New Jersey. The Courts set in motion a legislative process that is still in the need of clarification.

The verdict has forced the State to define what a "thorough and efficient" education actually means and develop a funding methology to insure that the Constitution is enforced. "T&E" includes an expansive educational program which is designed to insure minimum competencies for all students. In order to

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[41]Dolores T. Corona, Associate Director, "Tenure Challenged" in Capital Facts (NJEA Government Publication: New Jersey Education Association, June 9, 1977), p. 4.

[42]New Jersey Education, Response To Proposed Regulations On Evaluations Of Tenured Teaching Staff Members Proposed By The Commissioner Of Education To The New Jersey State Board Of Education (New Jersey Education Association, 1977), p. 1.

implement this system, there was the simultaneous development of a program of fiscal accountability which includes a method of taxation and a procedure for the disbursement of necessary funds to local districts.

On the surface, "T&E" appears to be the realization of a constitutional mandate. In reality, it has become the bane of many public school teachers and administrators. In a State where local control has been vigorously upheld, "T&E" has speeded the erosion of local autonomy. By creating a statewide system of educational and financial accountability, the State Department of Education has, in effect, taken major financial decisions away from local school boards. The imposition of "caps" has had the negative effect of curtailing program development in wealthier districts while attempting to give poorer districts an opportunity to catch-up. Whether or not this attempt has been successful is still open to debate.[43]

Further, the implementation of goals development and needs assessment appeared to be a worthwhile undertaking while in its formative stages. However, without clear direction from the Commissioner of Education and the State Department of Education, "T&E" became an entangled web of paperwork which choked the very essence of the "thorough and efficient" mandate. The problem became so acute in many districts throughout the State, that both the Commissioner and the State Department of Education

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[43]Larry Rubin, The Need For Statewide Minimum Competencies In A Thorough And Efficient Education System. A Report (New Jersey: Greater Newark Urban Coalition, p. 977)

officials were beseiged with requests for clarification. These requests came primarily from the New Jersey Education Association and the New Jersey School Boards Association. As a result, the reduction of paperwork became a major concern.[44] The absence of clear policy statements regarding implementation allowed each district to provide for a "thorough and efficient" education in its own way be interpreting the law as it deemed appropriate.

Chapter 212, Laws of 1975 is clear on one item and that is the mandate for accountability. The accountability demanded by "T&E" led to two not unrelated developments. The first was the movement for teacher accountability through pupil progress, and the second was the emergence of several attacks on teacher tenure in New Jersey. The proponents of pupil progress argued that unless imcompetent teachers were remcved, no amount of state aid and special programs would insure pupil progress. This development forced the NJEA to rebut these proposals on every front through local negotiations, political action and public opinion.

The problem of tying pupil progress to teacher employment is very complex. Basically, teachers argue that they cannot be held accountable for the results of a test, which may be affected by areas of child development out of their control. Further, if teachers are unable to control the purse-strings of a program, they should only be held accountable for providing the best possible program within that framework.

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[44]Fred G. Burke, "Memorandum, Re: Reduction of Paperwork By LEAs," September 19, 1977.

The tenure question is a complex one and is a part of the accountability movement. Tenure insures teachers a seniority protection and a fair dismissal procedure. It does not protect incompetency. The question of incompetency is a managerial problem. The tenure law is very clear and so is the process of dismissal. The failure to relieve incompetent teaching staff members or even provide for in-service education is a commentary on public school administrators. It must be remembered that tenure is also available to administrators. Evaluating teachers on the basis of student progress on standardized tests is hardly a process which provides for teacher improvement, but it does relieve administrators of the responsibilities inherent in management. The attacks on teacher tenure have taken on a variety of forms, but none of these forms have demonstrated a clear relationship between tenure and teacher incompetence. In this area, one must be careful not to misinterpret assumptions as provable assertions.

There is no conflict between "T&E" and teacher tenure except as particular groups prefer to interpret and implement the Administrative Code relative to "T&E." "T&E" is a system of educational and financial accountability. Teacher tenure is a statute which dictates the terms of an employer/employee relationship in terms of seniority and fair dismissal. Even if tenure were totally abolished, it would be naive of school boards to think that teachers would not bargain for a seniority provision and a dismissal procedure. Seniority is a basic provision and concern of all employees, whether in the public sector or the private sector.

In summary, Robinson v. Cahill has had an unparalleled effect on the structure of public education in New Jersey, and that effect will continue to be echoed in various communities as each vested interest attempts to make sense and, perhaps, take advantage of a law that is open to interpretation in almost all respects.

APPENDIX

Summary of Recommendations of New Jersey's Assembly Education Committee

1. In all cases involving removal of tenure, the Commissioner of Education shall render a decision within 120 days after the charges are certified.

2. In the event of an appeal from the Commissioner to the State Board of Education, the Board shall render its decision within 60 days after the appeal is certified. If the case is remanded back to the Commissioner, he shall render a decision within 30 days.

* In the event that a decision is not rendered within 120 days, then the State Department of Education shall be responsible for paying the salary of the individual until such time as a decision is made. Such funds shall be by special appropriation subject to review by the Claims Committee of the Joint Appropriations Committee.

3. By September 1, 1977, the Department of Education shall issue clear and explicit guidelines for dismissal procedures and thereafter shall annually issue a summary report to the Legislature on the status of actions under the "Tenure Employees Hearing Law."

4. "The Tenure Employees Hearing Law" should be amended to permit that an employee may be suspended without pay for up to five days of fined up to five days pay due to inefficiency, incapacity, unbecoming conduct or other just cause.

**5. All cases involving tenure should go before the Commissioner. We should not create another level of bureaucracy in the tenure dismissal process.

**6. It is recommended that all school districts hire a qualified personnel evaluator to evaluate all teaching staff personnel. After 2 unsatisfactory evaluations, the district superintendent, local board, and county superintendent shall be notified.

**7. It is recommended that the State Board of Education issue guidelines for a comprehensive evaluation system. The evaluation system should include:
- reasonable uniform standards of professional performance;
- clear and explicit criteria for assessment of that performance;
- provisions for guidance, assistance and professional development; and
- sufficient flexibility to permit local districts to develop programs to address local needs.

**8. There should be a comprehensive study of our teacher certification requirements.

9. There should be a commission established to study teacher preparation programs at the State Colleges.

*10. Superintendents of schools shall not be eligible for tenure until after <u>three</u> years of service in that position.

11. Any staff member promoted or transferred to an administrative position within the district shall not be eligible for tenure until after three years of service in that position.

* Indicates the areas where the minority report differs with the views of the committee.

** Indicates a significantly different recommendation.

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